

1 The Honorable Ricardo S. Martinez  
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12 UNITED STATES DISTRICT COURT  
13 WESTERN DISTRICT OF WASHINGTON  
14 AT SEATTLE

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 v.

18 DESMOND MANAGO,

19 Defendant.

20 No. CR14-023-RSM

21 DEFENDANT'S RESTITUTION  
22 MEMORANDUM

23  
24 The Defendant, by and through his attorney of record, Craig Platt, hereby files this  
25 Restitution Memorandum in the above-captioned case. A restitution hearing is scheduled for  
26 Thursday, November 19, 2015 at 11:00 a.m. The defense does not intend to present any  
27 testimony, and will rely on the filed documents and exhibits, along with the Defendant's  
28 Presentence Report ("PSR").

29  
30 I. BACKGROUND

31 On February 5, 2015, Mr. Manago was convicted of one count of Sex Trafficking of a  
32 Child, in violation of Title 18, United States Code, Section 1591. As part of his plea agreement,  
33 Mr. Manago agreed to make restitution to victims JF1 and A.H. in an amount to be determined at  
34 sentencing. Dkt 24 at 4.

35  
36 II. LAW AND ANALYSIS

37 The court shall order restitution for any offense under 18 U.S.C. 1581 *et seq.* 18 U.S.C.  
38 1593(a). The order of restitution shall direct the defendant to pay the victim the full amount of  
39 the victim's losses. 18 U.S.C. 1593(b)(1). The full amount of the victim's losses shall include

1 the greater of the gross income or value to the defendant of the victim's services or labor or the  
 2 value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of  
 3 the Fair Labor Standards Act. 18 U.S.C. 1593(b)(3).

4  
 5 The burden of demonstrating the amount of the loss sustained by a victim as a result of  
 6 the offense shall be on the attorney for the government. 18 U.S.C. §3664(e). The government's  
 7 burden is a preponderance of the evidence. 18 U.S.C. §3664(e); *United States v. Savoie*, 985  
 8 F.2d 612, 617 (1st Cir. 1993); Government's Restitution Memorandum at 4. It is true the  
 9 standard must be applied in a practical, common sense way. *Savoie*, 985 F.2d at 617. But  
 10 common sense does not reduce the government's burden. The Ninth Circuit describes the  
 11 preponderance of the evidence standards as "a meaningful one that requires the judge to be  
 12 convinced by a preponderance of the evidence that the fact in question exists." *United States v.*  
 13 *Restrepo*, 946 F.2d 654, 661 (9th Cir. 1991) (citing *United States v. Streeter*, 907 F.2d 781, 792  
 14 (8th Cir. 1990)). It is a misinterpretation of the preponderance test that it call on the trier of fact  
 15 merely to perform an abstract weighing of the evidence in order to determine which side has  
 16 produced the greater quantum, without regard to its effect in convincing his mind of the truth of  
 17 the proposition asserted. *Restrepo*, 946 F.2d at 661 (citing *In re Winship*, 397 U.S. 358, 367-68,  
 18 90 St. Ct. 1068 (1970). This is the standard the government must satisfy.

19  
**A. Restitution As To JF1**

20  
 The government does not claim any costs incurred by JF1 for medical services; physical  
 21 and occupational therapy or rehabilitation; necessary transportation, temporary housing, and  
 22 child care services; lost income; or any other losses. See 18 U.S.C. 2259(3). It claims only the  
 23 greater of the gross income or value to Mr. Manago of JF1's services or labor or the value of  
 24 JF1's labor. See Government's Restitution Memorandum at 5-6. The government has produced  
 25 no evidence to support a claim beyond the scope of gross income or value to Mr. Manago of  
 26 JF1's services or labor or the value of JF1's labor. As a result, the issue of restitution as to JF1  
 27 must be limited to this issue. See 18 U.S.C. §3664(e) (burden of demonstrating the amount of  
 28 loss shall be on the government).

29  
 The government claims JF1 testified that she had between 10 to 20 dates each day during  
 30 the time she worked for Mr. Manago. Government's Sentencing Memorandum at 5. However,  
 31 JF1's testimony shows she did not know how many dates she would go on during a typical day:

32  
**Q. How many dates would you do a day typically?**

33  
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1           A. *I don't know.*

2           Q. Would it range?

3           A. Like 10, 20, *I don't know.*

4           Grand Jury Testimony of JF1, Gov't Exhibit 1 at 17 (emphasis added). JF1 also "guessed" when  
 5           she claimed she earned "like \$5,000" per week (or a total of \$20,000). *Id.* at 21-22 ("Could you  
 6           guess how much money you gave him per week?" (emphasis added)). JF1 similarly speculated  
 7           when she earned at least \$30,000.00 at a later time. See *id.* at 33. The government has provided  
 8           no foundational facts to support these bald claims. It has pointed to no other independent  
 9           evidence to corroborate JF1's guesses. This is distinct from the circumstances in *United States*  
 10           *v. Nash*. There the Ninth Circuit explained "[t]he district court did not err by relying on the  
 11           victim's sworn statements *and the corroborating extrinsic evidence* to establish the amounts  
 12           earned...." *United States v. Nash*, 558 Fed. Appx. 741, 741 (9th Cir. 2014) (emphasis added).  
 13           The preponderance of evidence standard is a meaningful standard. *Restrepo*, 946 F.2d at 661.  
 14           The standard Congress placed on the government cannot be met by a guess or speculation. Mr.  
 15           Manago denies JF1 made \$5,000 per week during October 2012 or a total of \$20,000. He further  
 16           denies JFL earned \$30,000 at a later time. The \$50,000 figure is inaccurate. The government  
 17           has failed to prove this amount by a preponderance of evidence.

18           Congress has specified an alternative measure for restitution under 18 U.S.C. §1593 for a  
 19           purpose. This is the "value of the victim's labor as guaranteed under the minimum wage and  
 20           overtime guarantees of the Fair Labor Standards Act." 18 U.S.C. §1593(b)(3). The court must  
 21           resort to this alternative measure because the government has failed to prove the value to Mr.  
 22           Manago of JF1's services or labor by a preponderance of the evidence as it concedes is required.  
 23           18 U.S.C. §3664(e); *United States v. Savoie*, 985 F.2d 612, 617 (1st Cir. 1993); Government's  
 24           Restitution Memorandum at 6. Accordingly, the court must order restitution in the amount of  
 25           \$26,613.76 as the government explains and admits is the proper amount under the alternative  
 26           measure. Government's Restitution Memorandum at 6.

27           **B. Restitution As To A.H.**

28           The government does not claim any costs incurred by A.H. for medical services; physical  
 29           and occupational therapy or rehabilitation; necessary transportation, temporary housing, and  
 30           child care services; lost income; or any other losses. See 18 U.S.C. 2259(3). It claims only the  
 31           greater of the gross income or value to the defendant of A.H.'s services or labor or the value of

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1 A.H.'s labor. See Government's Restitution Memorandum at 6-7. The government has produced  
 2 no evidence to support a claim beyond the scope of gross income or value to Mr. Manago of  
 3 A.H.'s services or labor or the value of A.H.'s labor. As a result, the issue of restitution as to  
 4 A.H. must be limited to this issue. See 18 U.S.C. §3664(e).  
 5

6 As with JF1, the government relies on similar guess work to support its restitution claim  
 7 for A.H. For example, the government asserts that A.H. testified Mr. Manago "required her to  
 8 work as a prostitute seven days a week, earn between \$500 to \$1000 per day, and provide him  
 9 with all of her earnings." Government's Restitution Memorandum at 7.<sup>1</sup> It ignores the content  
 10 of A.H.'s actual testimony:  
 11

12 Q. Did he also set the prices for your dates?  
 13

14 A. *He didn't set prices*, but he'd tell me a specific amount of money that I had to get a  
 15 day, anywhere from five to a thousand dollars. My prices were what I set.  
 16

17 Q. But *he wanted* you to give him 500 to a thousand dollars a day?  
 18

19 A. Yes.  
 20

21 ...  
 22

23 Q. What would happen if say you only made \$300 in a day?  
 24

25 A. Like some days he was okay with it. Some days he would get frustrated with it....  
 26

27 Grand Jury Testimony of A.H., Gov't Exhibit 2 at 10-11 (emphasis added). It is apparent A.H.  
 28 did not earn \$500 to \$1000 every day as the government claims. The government's claim that  
 29 A.H. earned \$50,000 at a later date also falls short of proof by a preponderance of the evidence.  
 30 It ignores the content of A.H.'s actual testimony:  
 31

32 Q. How much do you *think* you made during this cross-country trip?  
 33

34 A. *I want to say* about \$50,000.  
 35

36 Grand Jury Testimony of A.H., Gov't Exhibit 2 at 33 (emphasis added). The government has  
 37 provided no foundational facts to support these bald claims. It has pointed to no other  
 38 independent evidence to corroborate A.H.'s guesses. Mr. Manago denies the value of A.H.'s  
 39 services or labor reached \$50,000 during such a short period of time. The \$50,000 figure is  
 40 inaccurate. The government has failed to prove this amount by a preponderance of evidence.  
 41 Accordingly, the court must resort to the alternative measure for restitution under 18 U.S.C.  
 42

43  
 44 <sup>1</sup> It is telling many of the government's assertions are tempered by the signal "*See.*" This signal is used when the  
 45 proposition is not directly stated by the cited authority.  
 46

1 §1593(b)(3) for a purpose. The government admits the value of A.H.'s labor as guaranteed  
 2 under the minimum wage and overtime guarantees of the Fair Labor Standards Act is  
 3 \$26,613.76. Government's Restitution Memorandum at 7.

5 **III. CONCLUSION**  
 6

7 The restitution analysis under 18 U.S.C. §1593 does not consider emotion, disgust, or  
 8 disdain. See 18 U.S.C. §1593; see also *United States v. Nash*, 558 Fed.App. 741, 742 (9th Cir.  
 9 2014) ("Nash contends that there was no evidence of ill-gotten gain or monetary loss...The  
 10 relevant statute, however, provides that the restitution order should compensate 'the full amount  
 11 of the victim's losses'...."); compare Government's Restitution Memorandum at 6 ("ill-gotten  
 12 profits"); 7 ("ill-gotten gains" "exploitation"). Mr. Manago has taken responsibility and is  
 13 serving a sentence to include a term of imprisonment for 120 months for his actions.  
 14

15 The government must prove by a preponderance of the evidence the gross income or  
 16 value to the defendant of the victim's services or labor for the court to order restitution in the  
 17 amount of \$50,000 for JF1 and \$50,000 for A.H. 18 U.S.C. §1593(b)(3); 18 U.S.C. §3664(e);  
 18 *Savoie*, 985 F.2d at 617; Government's Restitution Memorandum at 4. This standard does not  
 19 call on the court merely to perform an abstract weighing of the evidence in order to determine  
 20 which side has produced the greater quantum. It is a meaningful standard that requires the judge  
 21 to be convinced by a preponderance of the evidence that the fact in question exists. *Restrepo*,  
 22 946 F.2d at 661. Speculation, guess, and bald assertions are insufficient. The government has  
 23 failed to meet its burden to show that value to Mr. Manago of JF1's services or labor was in fact  
 24 \$50,000 and A.H.'s was \$50,000.  
 25

32 DATED this 3<sup>rd</sup> day of November, 2015.  
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34   
 35 Respectfully submitted,  
 36   
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1 CERTIFICATE OF SERVICE  
2

3 I hereby certify that on 11/12/2015, I electronically filed the foregoing with the Clerk of  
4 the Court using the CM/ECF system which will send notification of such filing to the attorney(s)  
5 of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the  
6 defendant(s) that are non CM/ECF participants via telephax.  
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